

AF 12872 #

PATENT

IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: M. Davis, et al.  
Application No.: 09 / 648,525 Group No.: 2872  
Filed: 26 August 2005 Examiner: A.V. Amari  
For: OPTICAL FILTER HAVING A SHAPED FILTER FUNCTION



Mail Stop Appeal Briefs & Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF  
(PATENT APPLICATION—37 C.F.R. § 1.192)

NOTE: The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) (which provides an adjustment of patent term if there is a delay on the part of the Office to respond within 4 months after an "appeal was taken") means the date on which an appeal brief under § 1.192 (and not a notice of appeal) was filed. Compliance with § 1.192 requires that: 1. the appeal brief fee (§ 1.17(c)) be paid (§ 1.192(a)); and 2. the appeal brief complies with § 1.192(c)(1) through (c)(9). See Notice of September 18, 2000, 65 Fed. Reg. 56366, 56385-56387 (Comment 38).

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on 20 JUNE 2005

NOTE: "Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. . . ." 37 C.F.R. § 1.192(a) (emphasis added).

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\*

(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☐ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10 \*

☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Addressee"

Mailing Label No. \_\_\_\_\_ (mandatory)

TRANSMISSION

☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

Signature

William J. Barber

(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

## 2. STATUS OF APPLICANT

This application is on behalf of

☒ other than a small entity.

☐ a small entity.

A statement:

☐ is attached.

☐ was already filed.

## 3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 1.17(c), the fee for filing the Appeal Brief is:

☐ small entity \$ 170.00

☒ other than a small entity \$ 500.00

Appeal Brief fee due \$ 500.00

## 4. EXTENSION OF TERM

NOTE: 37 C.F.R. § 1.704(b) ". . . an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph."

NOTE: The time periods set forth in 37 C.F.R. § 1.192(a) are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). See also Notice of November 5, 1985 (1060 O.G. 27).

NOTE: As the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-month maximum period specified in 35 U.S.C. § 133, the period for filing an appeal brief may be extended up to seven months. 62 Fed. Reg. 53,131, at 53,156; 1203 O.G. 63, at 84 (Oct. 10, 1997).

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

(complete (a) or (b), as applicable)

(a) ☒ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input checked="" type="checkbox"/> one month	\$ 120.00	\$ 55.00
<input type="checkbox"/> two months	\$ 430.00	215.00
<input type="checkbox"/> three months	\$ 980.00	490.00
<input type="checkbox"/> four months	\$1530.00	765.00
<input type="checkbox"/> five months	\$2080.00	1040.00

Fee: \$ 120.00

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for \_\_\_\_\_ months has already been secured, and the fee paid therefor of \$ \_\_\_\_\_ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ \_\_\_\_\_

or

- (b) ☐ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

#### 5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$ 500.00

Extension fee (if any) \$ 120.00

**TOTAL FEE DUE \$ 620.00**

#### 6. FEE PAYMENT

- ☒ Attached is a ☒ check ☐ money order in the amount of \$ 620.00
- ☐ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_
- ☐ to Deposit Account No. \_\_\_\_\_
- ☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should **not** be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

#### 7. FEE DEFICIENCY

**NOTE:** If there is a fee deficiency and there is no authorization to charge an account, additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in returning the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to change the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G. 31-33.

- ☒ If any additional extension and/or fee is required,

AND/OR

- ☒ If any additional fee for claims is required, charge:

☒ Deposit Account No. 23-0442

- ☐ Credit card as shown on the attached credit card information authorization form PTO-2038.

**WARNING:** Credit card information should **not** be included on this form as it may become public.

Date: 20 SEPTEMBER 2005

Reg. No.: 32,720

Customer No.: 4955

  
SIGNATURE OF PRACTITIONER

William J. Barber

*(type or print name of practitioner)*

Ware, Fressola, Van Der Sluys & Adolphson LLP  
755 Main Street, P.O. Box 224

P.O. Address

Monroe, Connecticut 06468

(Transmittal of Appeal Brief [9-6.1]—page 4 of 4)



PATENT  
File No.: 712-002-165/CC-0273

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Re application of: M. Davis et al.

Serial No.: 09/648,525 : Examiner: A. V. Amari

Filed: August 26, 2000 : Group Art Unit: 2872

For: OPTICAL FILTER HAVING A SHAPED FILTER FUNCTION

**MAIL STOP APPEAL BRIEFS - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

**BRIEF FOR APPELLANTS**

Sir:

This is an appeal from an Official Action mailed March 17, 2005, made final.<sup>1</sup>

A Notice of Appeal was mailed on June 17, 2005 with a return receipt postcard. The Patent Office stamped and mailed the return receipt postcard back to applicants on June 20, 2005, which is the effective date of mailing of the Notice of Appeal.

This Brief is being filed in **triplicate** with a fee in the amount of \$500.00 in accordance with 37 CFR §1.17(c).

09/23/2005 AKELECH1 00000028 09648525

01 FC:1251

120.00 OP

09/23/2005 AKELECH1 00000028 09648525

02 FC:1402

500.00 OP

<sup>1</sup> I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: MAIL STOP APPEAL BRIEFS - PATENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

  
William J Barber

20 SEPT. '05  
Date

**I. THE REAL PARTY IN INTEREST**

The real party in interest is CiDRA Corporation, of Wallingford, Connecticut, a corporation of the State of Delaware, doing business at 50 Barnes Park North, Wallingford, CT 06492.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals and interferences.

**III. STATUS OF CLAIMS**

Claims 1 - 21, 32-37, 43-47, 49-54, 56, 58-68 and 70-72 are pending and stand rejected.

Claims 22-31, 39, 40, 42 and 70 are indicated to be allowed.

**IV. STATUS OF AMENDMENTS**

The last response submitted by Applicants was mailed December 29, 2004, which was entered.

**V. SUMMARY OF THE INVENTION**

The inventors have designed a new and unique optical filter having a first optical element and a second optical element. The first optical element includes a first reflective element for receiving light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function. The second optical element is optically connected to the first optical element to receive the reflected first wavelength band of the light and includes a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function. The whole thrust of the claimed optical filter is characterized by the fact that at least one of the first reflective filter function and the second reflective filter function is not substantially flat over a substantial portion of the respective first or second reflective filter function, and the first wavelength band and the second wavelength band overlap spectrally, as recited in claim 1.

Independent method claim 32 recites a method for filtering an input light having corresponding steps with substantially similar features, while independent claims 71 and 72 recite that at least one of the first and second reflective filter functions

is not substantially constant, rectangular or square in shape over a substantial portion thereof.

One important advantage of this claimed optical filter and the method for filtering related to the same is that it can tune an optical input signal and produce a filtered optical output signal, where the tuning can result in the optical output signal having a desired effective filter function that is very difficult or substantially impossible to produce by a single grating, as described in the patent application on page 9, lines 23-25. For example, Figures 5-7 show respective filter profiles for the first and second reflective filter functions, as well as output filter functions that would be very difficult or substantially impossible to produce by a single grating. In particular, Figures 5-7 show examples of combining Gaussian and ramp amplitude profiles to provide a desired signal having a combined Gaussian/ramp grating amplitude profile in Figure 5, or combining a Gaussian and rectangular amplitude profiles to provide a desired signal having a combined Gaussian/rectangular amplitude profile in Figures 6-7. The desired Gaussian/ramp and Gaussian/rectangular amplitude profiles have different amplitude profiles than either filter function profile of the two gratings used to provide the same. It is respectfully submitted that a person skilled in the art would appreciate that the combined Gaussian/ramp and Gaussian/rectangular amplitude profiles would



be very difficult or substantially impossible to produce by a single grating.

Further, there is a need in the state of the art for an optical filter that can tune and/or condition an optical input signal into an optical output signal having such a desired effective filter function that is not substantially flat over a substantial portion thereof, and the claimed optical filter fills that need.

For all these reasons, the claimed optical filter provides an important contribution to the overall state of the art.

Finally, consistent with that described above, independent claim 58 recites an optical filter having a first reflective element for reflecting a first wavelength band of light centered at a first reflection wavelength, and a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, whereby the first reflection wavelength and the second reflection wavelength are substantially the same. Figures 3A, 3B, 3C and 6 show the filter function profiles for this embodiment. This claimed optical filter also provides an important contribution to the overall state of the art for reasons consistent with that described above.

## VI. ISSUE

The following issue will be addressed in the Argument:

Whether claims 1-6, 8-9, 11-12, 15, 32-34, 36, 43-45, 47, 58-62, 64, 66-68, 71 and 72 are obvious based on a proposed combination of Li (U.S. Patent 5,841,918) in view of Feced et al. (U.S. Patent 6,445,852).

Whether the remaining pending claims 7, 10, 13-14, 16-21, 35, 37, 46, 49-54, 56, 63 and 65 are obvious based on proposed combinations of Li in view of Feced et al. alone, or further in view of either Kringlebotn (U.S. Patent No. 6,097,487) or Kewitsch (U.S. Patent No. 6,236,782) or Fernald et al. (U.S. Patent No. 6,229,827) or Putnam et al. (U.S. Patent No. 6,310,990), or some combination thereof.

## VII. GROUPING OF THE CLAIMS

The patentability of all the pending claims is argued separately.

VIII. ARGUMENTS

In paragraphs 1-2 of the Office Action, claims 1-6, 8-9, 11-12, 15, 32-34, 36, 43-45, 47, 58-62, 64, 66-68, 71 and 72 are rejected as being obvious based on a proposed combination of Li (U.S. Patent 5,841,918) in view of Feced et al. (U.S. Patent 6,445,852).

The obviousness rejection is traversed for the reasons set forth below, which are substantially consistent with the remarks submitted in Applicants' December 29th response:

Claim 1

The obviousness rejection is respectfully traversed because neither Li, Feced et al. nor the proposed combination thereof teaches or suggests an optical filter featuring first and second optical elements having respective first and second reflective filter functions, wherein at least one of the first and second reflective filter functions is not substantially flat over a substantial portion of the respective first or second reflective filter functions, as recited in claim 1.

Consistent with that described above, one important advantage of this claimed optical filter is that it can tune an optical input signal and produce a filtered optical output signal, where the tuning can result in the optical output signal having a desired effective filter function that is very difficult

or substantially impossible to produce by a single grating, as described in the patent application on page 9, lines 23-25. For example, Figures 5-7 show respective filter profiles for the first and second reflective filter functions, as well as output filter functions that would be very difficult or substantially impossible to produce by a single grating. In particular, Figures 5-7 show examples of combining Gaussian and ramp amplitude profiles to provide a desired signal having a combined Gaussian/ramp grating amplitude profile in Figure 5, or combining a Gaussian and rectangular amplitude profiles to provide a desired signal having a combined Gaussian/rectangular amplitude profile in Figures 6-7. The desired Gaussian/ramp and Gaussian/rectangular amplitude profiles have different amplitude profiles than either filter function profile of the two gratings used to provide the same. It is respectfully submitted that a person skilled in the art would appreciate that the combined Gaussian/ramp and Gaussian/rectangular amplitude profiles would be very difficult or substantially impossible to produce by a single grating.

Further, there is a need in the state of the art for an optical filter that can tune and/or condition an optical input signal into an optical output signal having such a desired effective filter function that is not substantially flat over a substantial portion thereof, and the claimed optical filter fills

that need. For all these reasons, the claimed optical filter provides an important contribution to the overall state of the art.

In contrast to the claimed invention, Li discloses an optical system having a tuning element 18 with a reflection profile shown in Figure 2a, and a tuning element 20 with a transmission profile shown in Figure 2b, each having a respective amplitude profile. The combined reflection and transmission profiles result in a desired optical signal having a filter function shown in Figure 2c. In effect, Li's optical filter merely has two substantially flat filter functions, for providing an output signal having a corresponding substantially flat filter function. In operation, Li's filter can only tune or condition the optical input signal in relation to its bandwidth and/or wavelength using such substantially flat filter functions. Consistent with that shown in Figure 3, Li's optical system may be used as a demultiplexer receiving channels on waveguide 10 and passing or blocking the same to output 1, output 2, output 3 or output 4.

Moreover, Li does not hint or suggest to use at least one of the first and second reflective filter functions that is not substantially flat over a substantial portion of the first or second reflective filter functions, as recited in claim 1, especially in order to produce an optical output signal that is

not substantially flat over a substantial portion thereof, which is the whole thrust of the claimed invention. Moreover still, nothing in Li suggests a reason to look beyond the teaching of Li itself as a whole to produce an optical output signal that is not substantially flat over a substantial portion thereof. For example, there is clearly no reason or motivation to use anything other than a flat filter function in the optical systems disclosed by Li.

The reasoning in paragraph 2 of the March 17th Office Action recognizes the deficiency in the teaching of Li and points to Feced et al. to make up for the same. However, while Feced et al. discloses an optical filter having a filter function that is not substantially flat over a substantial portion thereof, it is respectfully submitted that one of ordinary skill in the art would not be motivated to combine Feced et al.' "not substantially flat" filter with one of Li's "substantially flat" filter in the manner proposed in the last paragraph of page 6 of the March 17th Office Action. For example, nothing in Feced et al. suggests a reason to modify the teaching of Li as a whole to produce an optical output signal that is not substantially flat over a substantial portion thereof. Moreover, it is respectfully submitted that neither Li nor Feced et al. suggests a need or desire "to provide for filter characteristics that are well-matched to ideal filter responses for a wide variety of

applications," as stated in the reasoning on page 7, lines 1-4, of the March 17th Office Action, which appears to be the whole basis for making the proposed combination of these two cited prior art references.

For all these reasons, it is respectfully submitted that the proposed combination of Li in view of Feced et al. does not teach or suggest the claimed invention.

Response to Arguments Re Claim 1  
on Pages 14-16 of the Final Rejection

In paragraph 10 of the March 17th Office Action (pages 14-16 thereof), the reasoning sets forth responses to arguments made by applicants in the communication mailed December 29, 2004. The following is a reply to the points raised therein.

1) In lines 3-12 of paragraph 10 of the March 17th Office Action, the reasoning remarks that applicants are "arguing features or limitations that are not recited in the claims."

However, in reply it is respectfully submitted that applicants' remarks are clearly directed towards "advantages" of the claimed optical filter, not features or limitations recited in claim 1. Applicants clearly state above that:

[O]ne important advantage of this claimed optical filter is that it can tune an optical input signal and produce a filtered optical output signal, where the tuning can result in the optical output signal having a desired effective filter function that is very difficult or substantially impossible to produce by a single grating, as described in the patent application

on page 9, lines 23-25. For example, Figures 5-7 show respective filter profiles for the first and second reflective filter functions, as well as output filter functions that would be very difficult or substantially impossible to produce by a single grating. In particular, Figures 5-7 show examples of combining Gaussian and ramp amplitude profiles to provide a desired signal having a combined Gaussian/ramp grating amplitude profile in Figure 5, or combining a Gaussian and rectangular amplitude profiles to provide a desired signal having a combined Gaussian/rectangular amplitude profile in Figures 6-7. The desired Gaussian/ramp and Gaussian/rectangular amplitude profiles have different amplitude profiles than either filter function profile of the two gratings used to provide the same. It is respectfully submitted that a person skilled in the art would appreciate that the combined Gaussian/ramp and Gaussian/rectangular amplitude profiles would be very difficult or substantially impossible to produce by a single grating. [Underlining provided by the undersigned for emphasis.]

It is respectfully submitted that claim 1 clearly does not recite the limitation "a desired effective filter function that is very difficult or substantially impossible to produce by a single grating", and applicants do not even remotely suggest that it does. Instead, applicants clearly state that this "desired effective filter function" that results from the claimed optical filter provides an important advantage that distinguishes the performance of the claimed optical filter over other optical filters known in the art.

Moreover, it is respectfully submitted that applicants clearly have the right to point out and argue "advantages" of the claimed invention over the prior art to support the position that the claimed invention is different and patentable over the same.



2) In lines 13-30 of paragraph 10 of the March 17th Office Action, the reasoning tries to further justify the basis for the proposed combination by taking the position that motivation to combine references "can be reasoned from knowledge that is known to one of ordinary skill in the art, established scientific principles or legal precedents established by prior case law."

However, in reply it is respectfully submitted that one of ordinary skill in the art would not be motivated to combine the cited prior art in the manner proposed based on any such so-called "reasoned from knowledge" motivation or for any other reason based on the evidence on the record for the following reasons:

Consistent with that discussed above, the whole thrust of Li is to provide a device for modifying the wavelength, bandwidth, or both of an optical signal. The modification can include a shift of the characteristic reflective spectrum or band, or an expansion or contraction of the spectrum. The device takes the form of multiple optical elements, each having substantially flat filter functions. In operation, light is first reflected off one optical element filter having one substantially flat filter function, then further reflected off a second optical element filter having a second substantially flat filter function, so as to modify the light accordingly. There is no hint or suggestion

whatsoever in Li to use any other type or kind of filter function other than a substantially flat one disclosed in Li. For instance, there is no hint or suggestion whatsoever in Li to use an optical element that is not substantially flat in place of either of Li's optical elements. Because of this, it is respectfully submitted that nothing on the record suggests why one of ordinary skill in the art would even be motivated to look at that disclosed by Feced et al. to make such a substitution and/or modification in a multiple optical element device like Li's optical system. It is also respectfully submitted that nothing in paragraph 10 of the March 17th Office Action suggests how or why such motivation is or "can be reasoned from knowledge that is known to one of ordinary skill in the art, established scientific principles or legal precedents established by prior case law" by one of ordinary skill in the art.

In spite of this, even for argument sake, if one of ordinary skill in the art were to look to Feced et al. to make such a substitution and/or modification in a multiple optical element device like Li's optical system, one would find no motivation to make such a substitution and/or modification, because the whole thrust of Feced et al. is directed towards the design and implementation of an optical device or system having a single optical element with a single optical filter function. Nothing in Feced et al. even remotely suggests providing an optical

filter having multiple optical elements with at least one of the first and second reflective filter functions that is not substantially flat over a substantial portion of the respective first or second reflective filter functions, as recited in claim 1, or the need or desire to do so. Because of this, even for argument sake, if one of ordinary skill in the art were to look to Feced et al., one would find no motivation to make such a substitution and/or modification to a multiple optical element device like Li's system. Finally, it is respectfully submitted that nothing in paragraph 10 of the March 17th Office Action suggests why such motivation is or "can be reasoned from knowledge that is known to one of ordinary skill in the art, established scientific principles or legal precedents established by prior case law" by one of ordinary skill in the art.

For these additional reasons, it is respectfully submitted that one of ordinary skill in the art would not be motivated to combine the cited prior art in the manner proposed based on any such so-called "reasoned from knowledge" or for any other reason based on the evidence on the record

Dependent Claims 2-6, 8-9, 11-12 and 15

Dependent claims 2-6, 8-9, 11-12 and 15 depend directly or indirectly from claim 1, contain all the limitations therein, and are deemed patentable for the reasons discussed above.

Claims 32 - 34 and 36

Independent claim 32 recites a method for filtering an input light having substantially similar limitations as claim 1. For reasons similar to that discussed above in relation to claims 1, it is respectfully submitted that independent claim 32 is deemed patentable over that disclosed in the proposed combination of Li in view of Feced et al.

Dependent claims 33-34, 36, 43-45 and 47 depend directly or indirectly from claim 32, contain all the limitations therein, and are deemed patentable for the reasons discussed above.

Claims 58 - 62, 64, and 66-68

Independent claim 58 recites an optical filter having a first reflective element for reflecting a first wavelength band of light centered at a first reflection wavelength, and a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, whereby the first reflection wavelength and the second reflection wavelength are substantially the same. Figures 3A, 3B, 3C and 6 show the filter function profiles for this embodiment.

Consistent with that discussed above, it is respectfully submitted that neither Li, Feced et al. nor the proposed combination thereof teaches or suggests an optical filter having

first and second reflection wavelengths that are substantially the same, as recited in claim 58. For example, Li clearly does not use first and second reflection wavelengths that are substantially the same, while nothing in Feced et al. hints or suggests using two reflection wavelengths that are substantially the same, as recited in claim 58. Moreover, if Li's first and second reflection wavelengths were substantially the same, then there would be no tuning of the bandwidth, which is the whole purpose of the design of Li's optical system. In view of this, it is respectfully submitted that Li effectively teaches away from the optical filter recited in claim 58, in such a way that there is no reason or motivation to look beyond the teaching of Li itself as a whole or to make such a modification. For all these reasons, it is respectfully submitted that the proposed combination of Li in view of Feced et al. does not teach or suggest the claimed invention.

Response to Arguments Re Claim 58  
on Page 16 of the Final Rejection

In paragraph 10 of the March 17th Office Action (page 16 thereof), the reasoning sets forth responses to arguments made by applicants in the communication mailed December 29, 2004. The following is a brief response to the points raised therein.

In lines 31-46 of paragraph 10 of the March 17th Office

Action, the reasoning takes the position that "Li is read as teaching that the first reflection wavelength (Figure 2a) and the second reflection wavelength (Figure 2b) are substantially the same as that shown in Figure 2c."

However, in reply it is respectfully submitted that a person skilled in the art would appreciate that if Li's first and second reflection wavelengths were substantially the same, then there would be no tuning of the bandwidth, which is the whole purpose of the design of Li's optical system. In view of this, it is respectfully submitted that Li effectively teaches away from the optical filter recited in claim 58, in such a way that there is no reason or motivation to look beyond the teaching of Li itself as a whole or to make such a modification.

#### Dependent Claims 59-62, 64, and 66-68

Moreover, dependent claims 59-62, 64, and 66-68 depend directly or indirectly from claim 58, contain all the limitations therein, and are deemed patentable for the reasons discussed above.

#### Claims 71-72

Independent claims 71-72 recites optical filters having similar limitations as claim 1. Claim 71 recites that at least one of the first or second reflective filter function is not

substantially constant over a substantial portion thereof. For reasons similar to that discussed above in relation to claims 1, it is respectfully submitted that independent claims 71 and 72 are deemed patentable over that disclosed in the proposed combination of Li in view of Feced et al.

#### The Remaining Dependent Claims

In paragraphs 3-7 of the Office Action, the remaining claims 7, 10, 13-14, 16-21, 35, 37, 46, 49-54, 56, 63 and 65 are rejected based on proposed combinations of Li in view of Feced et al. and/or further in view of Kringlebotn (U.S. Patent No. 6,097,487) or Kewitsch (U.S. Patent No. 6,236,782) or Putnam et al. (U.S. Patent No. 6,310,990) or Fernald et al. (U.S. Patent No. 6,229,827).

The remaining claims depend directly or indirectly from the aforementioned independent claims or one of the aforementioned dependent claims and contains all the limitations therein.

It is respectfully submitted that the one or more other cited references do not make up for the fundamental deficiency in that disclosed in Li in relation to that discussed above, or for the fundamental deficiency in basis for combining the cited prior art in the manner proposed consistent with that discussed above.

For these reasons, it is respectfully that the these remaining claims are patentable over the cited prior art.



Serial No. 09/648,525

Conclusion

In view of this, it is respectfully submitted that the reasoning in the rejection of these claims 9 and 72 is in error, and should be reversed.

Respectfully submitted,

William J. Barber  
Attorney for Applicants  
Registration No. 32,720

WJB/tp  
September 20, 2005



**IX. APPENDIX**

The following claims are pending in the patent application:

1. (Previously presented) An optical filter comprising:

a first optical element including a first reflective element for receiving light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function; and

a second optical element, optically connected to the first optical element to receive the reflected first wavelength band of the light, including a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function, whereby at least one of the first reflective filter function and the second reflective filter function is not substantially flat over a substantial portion of the respective first or second reflective filter function, and the first wavelength band and the second wavelength band overlap spectrally.

2. (Previously amended) The optical filter of claim 1, wherein one of the first and second optical elements is tunable to change the corresponding first or second reflection wavelength.

3. (Previously presented) The optical filter of claim 1, wherein both of the first and second optical elements is tunable to change each of the respective first and second wavelengths.

4. (Original) The optical filter of claim 1, further comprising:

an optical directing device optically connected to the first and second optical elements; the optical directing device directing the light to the first reflective element, directing the first wavelength band reflected from the first reflective element to the second reflective element, and directing the second wavelength band reflected from the second reflective element to the output port of the optical directing device.

5. (Original) The optical filter of claim 4, wherein the optical directing device comprises at least one circulator.

6. (Original) The optical filter of claim 5 wherein the circulator receives the light at a first port of the circulator, directs the light to the first reflective element through a second port of the circulator, receives the first wavelength band at the second port, directs the first wavelength band to the second reflective element through a third port of the circulator,

receives the second wavelength band at the third port, and directs the second wavelength band to a fourth port of the circulator.

7. (Original) The optical filter of claim 4 wherein said optical directing device comprises an optical coupler.

8. (Original) The optical filter of claim 1, wherein the first reflection wavelength and the second reflection wavelength are substantially aligned to reflect a portion of the aligned wavelength bands to an output port.

9. (Previously presented) The optical filter of claim 1, wherein one of the first and second reflective filter functions comprises one of a Gaussian, rectangular and ramp shape.

10. (Original) The optical filter of claim 1, wherein one of the first and second reflective elements is fully apodized and the other of the first and second reflective elements is partially apodized.

11. (Original) The optical filter of claim 1, wherein the first reflection wavelength is offset a predetermined spacing from the second reflection wavelength.

12. (Previously Presented) The optical filter of claim 1, wherein at least one of the first and second optical elements have an outer cladding and an inner core disposed therein, wherein the at least one of the first and second reflective element comprises a grating disposed in a longitudinal direction of the inner core.

13. (Original) The optical filter of claim 12, wherein the at least one of the first and second optical elements comprises:

an optical fiber, having a reflective element written therein; and

a tube, having the optical fiber and the reflective element encased therein along a longitudinal axis of the tube, the tube being fused to at least a portion of the fiber.

14. (Previously presented) The optical filter of claim 12, wherein the at least one of the first and second optical elements is an optical waveguide having an outer transverse dimension of at least 0.3 mm.

15. (Original) The optical filter of claim 12, wherein the at least one of the first and second optical elements is an optical fiber.

16. (Previously presented) The optical filter of claim 2 further includes a compression device that axially compresses at least one of the first and second optical elements, wherein at least one of the respective first and second reflective elements is disposed along an axial direction of the respective first and second optical elements.

17. (Previously presented) The optical filter of claim 3 further comprising:

a first compressing device for compressing axially the first element to tune the first reflective element, wherein the first reflective element is written in the longitudinal direction in the first optical element; and

a second compressing device for compressing axially the second optical element to tune the second reflective element, wherein the second reflective element is written in the direction in the second optical element.

18. (Original) The optical filter of claim 1 further includes a straining device for tensioning axially the first

optical element to tune the first reflective element, wherein the first reflective element is disposed along an axial direction of the first optical element.

19. (Original) The optical filter of claim 1 further includes a heating element for varying the temperature of the first optical element to tune the first reflective element to reflect the selected first wavelength band.

20. (Previously presented) The optical filter of claim 2 further includes:

a first compressing device for axially compressing at least the first optical element to tune the first reflective element, responsive to a displacement signal, wherein the first reflective element is disposed axially along the first optical element; and

a displacement sensor, responsive to the compression of the first optical element, for providing the displacement signal indicative of the change in the displacement of the first optical element.

21. (Previously presented) The optical filter of claim 20, wherein the displacement sensor includes a capacitance sensor coupled to the first optical element for measuring the change in the capacitance that depends on the change in the displacement of

the first optical element.

22. (Previously presented) A tunable optical filter comprising:

a tunable optical waveguide for receiving light, the tunable optical waveguide comprising:

a first inner core having a first reflective element disposed therein, the first reflective element receiving the light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function; and

a second inner core having a second reflective element disposed therein, the second inner core being optically connected to the first inner core to receive the reflected first wavelength band of the light, the second reflective element reflecting a second wavelength band of the light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function.

23. (Previously presented) The optical filter in claim 22, wherein the first and second reflective elements include a respective Bragg grating.

24. (Previously presented) The optical filter of claim 22, wherein the tunable optical waveguide has an outer transverse dimension of at least 0.3 mm.

25. (Previously presented) The optical filter of claim 22, further comprising:

an optical directing device optically connected to the first and second inner cores; the optical directing device directing the light to the first reflective element, directing the first wavelength band reflected from the first reflective element to the second reflective element.

26. (Original) The optical filter of claim 25, wherein the optical directing device comprises at least one circulator.

27. (Previously presented) The optical filter in claim 22, further includes a compressing device for axially compressing the tunable optical waveguide to tune the first and second reflective elements.

28. (Original) The optical filter of claim 22, wherein the first and second reflection wavelengths are substantially aligned.



29. (Previously presented) The optical filter of claim 22, wherein at least one of the first reflective filter function and the second reflective filter function is not substantially flat over a substantial portion of the respective first or second reflective filter function, and the first wavelength band and the second wavelength band overlap spectrally.

30. (Previously presented) The optical filter of claim 70, wherein the first and second reflection wavelengths are offset by a predetermined spacing.

31. (Previously presented) The optical filter of claim 22 further includes:

a compressing device for axially compressing the tunable optical waveguide to tune the first and second reflective elements, responsive to a displacement signal, wherein the first and second reflective elements are disposed axially along the tunable optical waveguide; and

a displacement sensor, responsive to the compression of the tunable optical waveguide, for providing the displacement signal indicative of the change in the displacement of the tunable optical waveguide.

32. (Previously presented) A method for filtering an input light; the method comprising:

providing a first optical element including a first reflective element for receiving the input light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function;

providing a second optical element, optically connected to the first optical element to receive the reflected first wavelength band of the light, including a second reflective element for reflecting a second wavelength band of light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function, whereby at least one of the first reflective filter function and the second reflective filter function is not substantially flat over a substantial portion of the respective first or second reflective filter function; and

tuning one of the first and second reflective elements to overlap spectrally the first wavelength band and the second wavelength band.

33. (Original) The method of claim 32 wherein the tuning one of the first and second reflective elements includes compressing the one of the first and second optical elements.

34. (Previously presented) The method of claim 32, wherein the tuning one of the first and second reflective elements comprises:

substantially aligning the first reflection wavelength and the second reflection wavelength.

35. (Original) The method of claim 32, wherein one of the first and second reflective elements is fully apodized and the other of the first and second reflective elements is partially apodized.

36. (Previously presented) The method of claim 32, wherein the tuning one of the first and second reflective elements comprises:

offsetting the first reflection wavelength and the second reflection wavelength by a predetermined spacing.

37. (Previously presented) The optical filter of claim 1, wherein the at least one of the first and second optical waveguides has outer dimensions along perpendicular axial and transverse directions, a first portion of the at least one of the first and second optical waveguides having an outer dimension being at least 0.3 mm along said transverse direction, at least a

portion of the first portion having a transverse cross-section which is continuous and comprises a substantially homogeneous material; and the at least one of the first and second optical waveguides being axially strain compressed so as to change the at least one of the first and second reflection wavelengths.

Claim 38 (Cancelled).

39. (Previously presented) The optical filter of claim 29, wherein one of the first and second reflective filter functions comprises one of a Gaussian, rectangular and ramp shape.

40. (Previously presented) The optical filter of claim 29, wherein one of the first and second reflective elements is fully apodized and the other of the first and second reflective elements is partially apodized.

Claim 41 (Cancelled).

42. (Previously presented) The optical filter of claim 29, wherein the shape of the first reflective filter function is different than the shape of the second reflective filter function.

43. (Previously presented) The method of claim 32, further comprising tuning the other one of the first and second reflective elements to overlap spectrally the first wavelength band and the second wavelength band.

44. (Previously presented) The method of claim 32, wherein one of the first and second reflective filter functions comprises one of a Gaussian, rectangular and ramp shape.

45. (Previously presented) The method of claim 32, wherein at least one of the first and second optical elements comprises an optical waveguide having an outer cladding and an inner core disposed therein, wherein the at least one of the first and second reflective element comprises a grating disposed in a longitudinal direction of the inner core.

46. (Previously presented) The method of claim 45, wherein the at least one of the first and second optical elements is an optical waveguide having an outer transverse dimension of at least 0.3 mm.

47. (Previously presented) The method of claim 45, wherein the at least one of the first and second optical elements is an optical fiber.

Claim 48 (Cancelled).

49. (Previously presented) The optical filter of claim 37, wherein both of the first and second optical waveguides is tunable to change each of the respective first and second reflection wavelengths.

50. (Previously presented) The optical filter of claim 37, wherein the first reflection wavelength and the second reflection wavelength are substantially aligned to reflect a portion of the aligned wavelength bands to an output port.

51. (Previously presented) The optical filter of claim 37, wherein one of the first and second filter functions comprises one of a Gaussian, rectangular and ramp shape.

52. (Previously presented) The optical filter of claim 37, wherein one of the first and second reflective elements is fully apodized and the other of the first and second reflective elements is partially apodized.

53. (Previously presented) The optical filter of claim 37, wherein the first reflection wavelength is offset a predetermined

spacing from the second reflection wavelength.

54. (Previously presented) The optical filter of claim 37, wherein at least one of the first and second reflective elements includes a Bragg grating.

Claim 55 (Cancelled).

56. (Previously presented) The optical filter of claim 37 further includes a compression device that axially compresses at least one of the first and second optical waveguides, wherein at least one of the respective first and second reflective elements is disposed along an axial direction of the respective first and second tunable elements.

Claim 57 (Cancelled).

58. (Previously presented) An optical filter comprising:

a first optical waveguide including a first reflective element for receiving light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function; and

a second optical waveguide, optically connected to the first optical waveguide to receive the reflected first wavelength band of the light, including a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function;

whereby the first reflection wavelength and the second reflection wavelength are substantially the same.

59. (Previously presented) The optical filter of claim 58, wherein one of the first and second optical waveguides is tunable to change the corresponding first or second reflection wavelength, and maintain substantial alignment of the first and second reflection wavelengths.



60. (Previously presented) The optical filter of claim 58, wherein both of the first and second optical waveguides is tunable to change each of the respective first and second reflection wavelengths, and maintain substantial alignment of the first and second reflection wavelengths.

61. (Previously presented) The optical filter of claim 58, further comprising:

an optical directing device optically coupled to the first and second optical waveguides; the optical directing device directing the light to the first reflective element, directing the first wavelength band reflected from the first reflective element to the second reflective element.

62. (Previously presented) The optical filter of claim 58, wherein one of the first and second reflective filter functions comprises one of a Gaussian, rectangular and ramp shape.

63. (Previously presented) The optical filter of claim 58, wherein one of the first and second reflective elements is fully apodized and the other of the first and second reflective elements is partially apodized.

64. (Previously presented) The optical filter of claim 58, wherein at least one of the first and second reflective elements includes a Bragg grating.

65. (Previously presented) The optical filter of claim 64, wherein a portion of the at least one of the first and second optical waveguides has an outer transverse dimension of at least 0.3 mm.

66. (Previously presented) The optical filter of claim 64, wherein the at least one of the first and second optical waveguides is an optical fiber.

67. (Previously presented) The optical filter of claim 59 further includes a compression device that axially compresses at least one of the first and second tunable optical waveguides, wherein at least one of the respective first and second reflective elements is disposed along an axial direction of the respective first and second optical waveguides.

68. (Previously presented) The optical filter of claim 58, wherein the shape of the first reflective filter function is different than the shape of the second reflective filter function.

Claim 69 (Cancelled).

70. (Previously presented) The optical filter of claim 22, wherein the first wavelength band and the second wavelength band overlap spectrally.

71. (Previously presented) An optical filter comprising:

a first optical element including a first reflective element for receiving light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function; and

a second optical element, optically connected to the first optical element to receive the reflected first wavelength band of the light, including a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function, whereby at least one of the first reflective filter function and the second reflective filter function is not substantially constant over a substantial portion of the respective first or second reflective filter function, and the first wavelength band and the second wavelength band overlap spectrally.

72. (Previously presented) An optical filter comprising:

a first optical element including a first reflective element for receiving light and reflecting a first wavelength band of the light centered at a first reflection wavelength, the first reflective element characterized by a first reflective filter function; and

a second optical element, optically connected to the first optical element to receive the reflected first wavelength band of the light, including a second reflective element for reflecting a second wavelength band of the light centered at a second reflection wavelength, the second reflective element characterized by a second reflective filter function, whereby at least one of the first reflective filter function and the second reflective filter function is not substantially rectangular or square in shape, and the first wavelength band and the second wavelength band overlap spectrally.